

## **REMARKS**

The present Amendment is a supplement to the Amendment filed August 19, 2006 in response to the Office Action dated June 21, 2006. The present Amendment incorporates the traverse of the restriction requirement set forth in the Amendment filed August 19, 2006. It is believed that no additional request for an extension of time to respond is necessary in view of the Amendment filed August 19, 2006.

The present amendment further amends the claims to conform to allowed claims in a foreign related application. See concurrently filed Supplemental Information Disclosure Statement.

The specification is amended to conform to the amended claims.

### **Traverse of Restriction Requirement**

In the Office Action, the examiner restricted the claims into three groups:

- I. Claims 1 – 21, directed to a dough dispensing machine
- II. Claims 22 – 40, directed to a system for dispensing dough
- III. Claims 41 and 42, directed to a process for preparing dough

The examiner argued that the inventions were distinct on the grounds that the process/method can be practiced by another and materially different apparatus without the specifics of the Group I and II apparatus.

The applicant respectfully requests reconsideration of the restriction.

The applicant submits that the restriction at best should be two groups: claims 1 – 40 and claims 41 and 42. As noted by the examiner, the limitations or “specifics” of the apparatus subject matter of claims in Groups I and II are similar (both classified in class 221 although the examiner contends different sub-classes.) In contrast, and as noted by the examiner, the limitations or “specifics” of the process limitations of Group III differ from that of Groups I and II in terms of the structure and the process steps of those Groups.

The limitations or “specifics” of the subject matter of the claims in Groups I and II are similar. The limitations in Group I express the claimed apparatus in terms of the structure. The limitations in Group II express in structural / functional terms the steps accomplished by the structure of the apparatus. It is proper to define some part of an invention in functional terms. Indeed, a functional limitation defines something by what it does, rather than by what it is (e.g., as evidenced by its specific structure.) A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element to define a particular capability or purpose that is served by the recited element. See MPEP § 2173.05 (g). Functional limitations serve to precisely define structural attributes; for example, “members adapted to be positioned” defines “interrelated components of a claimed assembly. *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976). A search for the apparatus of claims 1 – 21 is the same as that for the “system” of claims 22 – 40 that express in structural /

functional terms the steps accomplished by the structure of the apparatus. Such search for either Group I or Group II will necessitate a search of the two subclasses 175 and 303 of class 221.

Accordingly, the applicant submits that Groups I and II should be grouped together for examination of claims 1 – 40 while Group III with claims 41 and 42 remains restricted.

#### **Election In Response To Restriction (And Contingency Election)**

The applicant elects for prosecution the claims 1 – 40 of Groups I and II for the reasons set forth above in the traverse of the rejection, and claims 41 and 42 of Group III are withdrawn as directed to a non-elected invention.

In the alternative, and as a contingency only in the event that the examiner maintains the restriction as originally stated in the Office Action, the applicant elects the claims of Group I.

#### **Amendments To The Claims**

The amendments to the claims conform the preamble of the dependent claims to US practice by changing the indefinite article introducing the preamble to a definite article, for purposes of clarification. Also, the preambles of claims 12 – 21 are amended to conform to the preamble of claim 1, for consistency.

Independent claims 1 and 22 are amended to conform to the claims allowed in the foreign related application. The amendments incorporate the limitations of claims 11, 13, and 14 and 11, 35, and 36, into claims 1 and 22, respectively. Claims 11, 13, 14, 35, and 36 are cancelled.

The feature of former Claims 11, 13 and 14, namely the provision of an arcuate scraper device for the interior surface of a conical dough transfer device are not taught or suggested in the prior art documents. As described at page 9 lines 4 to 6 and 14 to 15 of the application, the batter is mixed at mixing stations which then supply the mixed batter to the containers (bowls 1,1'). The containers, once filled with the mixed batter, then move out of the mixing room on the track 14. Once this batter is initially mixed and prepared, it is important that it is handled thereafter with as little additional disturbance or further mixing as possible, as disclosed at page 10 lines 9 to 23 and 29 to page 11 line 3 of the application as originally filed. Applicants attempted different means of moving the prepared batter through the factory from mixing to cooking, including pumping the batter, but found that additional excess mixing occurred which effected the characteristics of the batter, resulting in uncontrolled and undesired variation in the final cooked product. It was found that it was necessary to retain the batter as undisturbed as possible after its initial controlled mixing and conditioning so that a final cooked product with the desired flavor and consistency could be achieved.

To facilitate this, the apparatus of the invention was developed and in particular, the insight was arrived at that the batter could be dispersed from the conical dough transfer device (hopper) with minimal disturbance by scraping the inside wall of the hopper with a scraper device as claimed in amended Claim 1. The gentle movement of the batter achieved in this manner is sufficient to

prevent a build-up of batter on the wall of the hopper, which would eventually cake to the extent that the exit from the base of the hopper would become blocked. At the same time, this gentle movement of the batter is such that further working or mixing of the batter is substantially avoided. In particular, the arrangement is such that the scraper is located in the conical dough transfer device near its dispensing exit and is shaped as an arc to assist in taking a “slice” of batter and driving it downward in the conical area of the hopper to be dispensed through the bottom exit. The combined shapes of the arcuate scraper acting in the conical portion of the dough transfer device provide a non-obvious, effective means for minimally handling batter while avoiding clogging of the exit.

None of the citations teach or suggest a dough dispensing apparatus or system such as that of the present invention as claimed in the amended claims in which a dough/batter is mixed and then transported about a factory in such a way that further mixing of the batter is avoided prior to the batter being cooked. IE 960202 discloses a process for preparing sponge-dough hamburger buns. There is no suggestion of treating the dough gently to avoid further mixing of it, indeed, it goes through several mixing steps and a pumping step, using screws 34, 35 which send the dough to supply pipe 33. This substantial working is avoided by the structure and system of Claims 1 and 22 (amended), thereby allowing the batter characteristics to be preserved up to the cooking stage.

DE 20014175U, DE 2,159,074 and US 6,245,370 B1 relate to mixing systems for firm doughs, such as pizza-base dough. The present invention is not directed to mixing batter, but to handling it post-mixing. DE 2,159,076 refers to a guide/scraper blade (303), but this has the function only of driving firm dough toward a beater (302) of the mixer. The bowl (208) is a

conventionally shaped bowl for mixing dough and the mixed dough is discharged through the open mouth of the bowl on tilting the bowl. US 5,673,609 is directed to making tortillas from a firm mixed dough. The mixer uses a vertical conveyor. US 5,630,358 is directed to an automated production system for crepes, tortillas and the like and is not in any way suggestive of the present invention's apparatus for handling batter. US 3,819,837 uses mixing and pumping for handling bread dough and as described above, this kind of handling would serve only to spoil the desired characteristics of the batter handled by the apparatus of the invention.

#### **Supplemental Information Disclosure Statement**

A Supplemental Information Disclosure Statement is concurrently filed herewith to bring to the attention of the examiner the search and examination report for the foreign related application.

#### **Summary**

For the foregoing reasons, it is believed that claims 1 – 10, 12, 15 – 33, and 37 – 40 as amended are in condition for allowance, and same is earnestly solicited.

Respectfully submitted,

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